No. 94-197

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1994

ELOISE ANDERSON, individually and in her official capacity as Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; and RUSSELL S. GOULD, Director, California Department of Finance,

*Petitioners,*

v.

DESHAWN GREEN, DEBBY VENTURELLA, and DIANA P. BERTOLLT, on behalf of themselves, and all others similarly situated,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF THE UNITED STATES JUSTICE FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* OF THE UNITED STATES JUSTICE FOUNDATION IN SUPPORT OF PETITIONERS

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### I. INTERESTS OF THE *AMICUS CURIAE*

The United States Justice Foundation (the "USJF") ("Amicus") moves pursuant to Rule 37 of the Rules of this Court for leave to file the accompanying brief as *amicus curiae* in support of Petitioners. USJF sought written consent to file this brief *amicus curiae* from Petitioners and Respondents. Petitioners provided written consent, which has been lodged with the Clerk of the

Court. Respondents, through their Counsel, American Civil Liberties Union Foundation of Southern California, refused to give consent to file this brief *amicus curiae*.

The USJF is a non-profit corporation organized under the laws of the state of California and dedicated to the preservation of property, civil and human rights. USJF regularly assists individuals and classes, not only to redress individual acts of injustice, but also to promote important public policy matters. USJF has been active in a variety of issues since it was founded in 1979, including significant developments in the law in the fields of tax limitation and welfare reform. During the Supreme Court's October term, 1991, USJF filed a Motion for Permission to File Brief as Amici Curiae and Brief in Support of Respondents in *Nordlinger v. Hahn*, 112 S.Ct. 2326 (1992), the case in which this honorable Court resolved the constitutionality of the California system of real property taxation. In addition, all three members of the Board of Directors of USJF are California residents and taxpayers, and share an interest on behalf of USJF in the stability and reform of the California welfare system.

USJF's active involvement in issues regarding California state government tax and spending policy enable them to provide this Court with an important perspective. In its brief, USJF addresses the equal protection challenge to Welfare and Institutions Code section 11450.03 and specifically discusses the appropriate standard of review and in the alternative California's compelling state interest in this important welfare reform legislation. USJF urges the Court to grant Petitioner's Writ of Certiorari to resolve the constitutionality of state welfare reform programs such as the one advanced by the State of California.

For the foregoing reasons, USJF respectfully requests leave of court to file this brief as *amicus curiae* in support of Petitioners.

Respectfully submitted,

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Dated: August 26, 1994

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## BRIEF OF THE UNITED STATES JUSTICE FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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### INTERESTS OF *AMICUS CURIAE*

The USJF is a non-profit corporation organized under the laws of the state of California and dedicated to the preservation of property, civil and human rights. USJF regularly assists individuals and classes, not only to redress individual acts of injustice, but also to promote important public policy matters. USJF has been active in a variety of issues since it was founded in 1979, including significant developments in the law in the fields

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USJF's active involvement in issues regarding California state government tax and spending policy enable them to provide this Court with an important perspective.

## SUMMARY OF FACTS AND CASE

Amid serious economic problems, the State of California enacted legislation which requires a twelve consecutive month period of residency in order to receive California Aid to Families with Dependent Children ("AFDC") benefits. Welfare and Institutions Section 11450.03 (the "statute") was approved by the United States Secretary of Health and Human Services and does not deny benefits to new residents. The statute provides the same level of benefits to a new resident as received in the state from which he or she moved from, for a limited period of time.

The Respondents are a class of California residents who aplied or will apply for benefits on December 1, 1992 or later. They did not reside in California for the immediate twelve consecutive months before their application for benefits.

On December 21, 1992 a Complaint was filed in District Court by Respondents which sought declaratory and injunctive relief. A day later, the District Court issued a temporary restraining order. The order prevented the State of California from implementing the statute.

A hearing was held at which the Respondents argued that they had suffered irreparable injury because they received a smaller AFDC grant than they would have had they met the twelve month residency requirement of the statute. The Petitioners showed that the State of Califor-



nia did not have funds available to pay the costs which would result if the statute was not implemented. The State's economic picture was so severe that failure to implement the statute would be contrary to the California Constitutional provision mandating a balanced budget. (Calif. Const. Art. IV, § 12(a)).

The District Court ruled for the Respondents and issued an injunction on January 28, 1993. The Court found that since a constitutional freedom to travel was at issue, a strict scrutiny analysis was required. Under that test as applied, California apparently could not convince the District Court that it had a compelling interest in the statute. Since the Respondents had shown to the District Court's satisfaction that irreparable injury would result, an injunction was granted.

On April 29, 1994 the State of California's appeal to the Ninth Circuit resulted tn the District Court's opinion being affirmed. The Order was published on April 29, 1994.

## SUMMARY OF ARGUMENT

The right the Respondents seek to enforce in this case is not the Constitutional right of freedom to travel migrate. Respondents, in fact, seek to enforce a right to higher welfare payments. Higher welfare payments are not a fundamental right guaranteed by the U.S. Constitution calling for strict scrutiny by this Court. As such, the State must show only a rational basis for the classification in order to satisfy the appropriate standard of review for equal protection analysis. The District Court therefore erred in identifying the right actually at issue in this case, and applied the wrong standard of review.

In the alternative, if this Court determines that a fundamental right is at issue, *amicus* submits that the State provided ample evidence in support of a conclusion that California has a compelling interest in this case, and the District Court erred in not fully considering and giving

appropriate weight to the evidence of dire economic hardship affecting the State government that was presented, and which is well-known to residents of California.

The decision of the Ninth Circuit to affirm the District Court leaves California with no option but to break the law. If the decision stands, California's Constitutional provision mandating a balanced budget is meaningless, and legitimate efforts by the executive and legislative branches of the State to establish priorities and a policy to control welfare spending will be rejected in favor of a different policy set by the judicial branch. USJF argues that welfare reform and the methods to achieve it have become so controversial that the Writ should be granted in this case, to resolve with finality the applicable standards, Constitutional rights involved, and policy setting mechanisms available to State governments to control welfare spending.

## ARGUMENT

### I. THE STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

#### A. Background

In 1992, Governor Wilson signed comprehensive legislation intended to reform a welfare system that is straining the state government's treasury at its' seams.[1] Enacted during a time of fiscal calamity for state government, and coupled with unfavorable general economic conditions, SB 485 offered a carefully considered balancing of interests by the political branch of state government intended to provide needed welfare benefits, in a rational manner so that the state might also meet its constitutional obligation to the People to balance its budget and set appropriate tax and spending priorities.

[1] Senate Bill 485, Socs. 1-154, Ch. 722, Stats. 1992.



Welfare and Insittutions Code section 11450.03 ("the Statute")[2] was just one of many measures contained in omnibus legislation aimed at reducing the growing costs of the state welfare system while maintaining assistance to needy Californians in the midst of a harshly depressed economy.

The Statute provides, generally, that families who have not resided in the State for 12 months will receive Aid to Families With Dependent Children (AFDC) welfare payments *at the level the family would receive in the state of prior residence*. In this regard, the State of California carefully crafted the legislation to ensure that recipients were not "irretrievably foreclosed" from obtaining benefits. (*See Sonsa v. Iowa*, 419 U.S. 393 at 406 (1975). The Respondents in the current case are initially able to receive the level of benefits they had been receiving all along. Further, they will eventually receive all of what they seek. Once the residency requirement is met the State will pay these benefits. Welfare and Institutes Code Section 11450.03. California is currently among the *highest paying welfare systems* in the country, the statute for the moment results in lower benefit payments to newcomers from most states.

Thus, the one year durational residency requirement for qualification for California resident level benefits for AFDC recipients changed the law to establish a "home state" level of benefits for newcomers. Other elements of the same package of legislation provided different necessary reforms. The net result of the entire legislation is a reduction of welfare costs generally, in an attempt to control the spiraling expenses of the entire system.

#### B. The Statute Does Not Create a Suspect Classification

Respondents would have this honorable Court believe that grave constitutional issues are at stake in this case. The reality, however, is that Respondent's constitutional

[2] Sec. 37.5, Ch. 722, Stats. 1992.

rights as newcomers to California are not much more affected by the statute at issue than if they wanted to get a divorce [3] or file as a candidate for the state Legislature,[4] or just vote in an election.[5]

What Respondents really seek is higher welfare payments. As Petitioner's point out, however, Congress has left to the states a great deal of discretion in setting levels of welfare payments.[6] These arguments however, are lost on the District Court which erroneously relies on a flurry of case law that, unlike the Statute at issue, implicate the right to travel because they provide *no* benefits to the class in question.

The classification created under Section 11450.03(a) is neutral. It does not discriminate on the basis of any distinct suspect classification. By its terms, the Statute does not explicitly operate to reduce the welfare benefits of newcomers. What it does do, is establish a one year durational residency requirement and provide for aid to newcomers:

> ". . . not to exceed the maximum aid payment that would have been received by that family from the

[3] Sec. 4530(a) of the California Civil Code establishes a durational residency requirement of six months in the state and three months in the county to file a petition for dissolution of marriage.

[4] California Constitution Article IV, § 2(c) establishes U.S. citizenship and a three year state durational residency requirement for candidates for the Legislature, and reads: "A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for three years immediately preceding the election. On the facts presented in Plaintiff's papers, Respondent Green is ineligible to run as a candidate for the California Legislature until sometime in 1995.

[5] California Elections Code, § 301 closes registration for purposes of voting in an election 29 days prior to the election.

[6] "Points and Authorities in Opposition to Plaintiff's Request for a Preliminary Injunction," p. 6.



> state of prior residence." (Welfare and Institutions Code Sec. 11450.03 (a)).

The District Court received evidence that California is currently paying AFDC recipients at the second highest grant level in the continental United States.[7] But the District Court overlooks the fact that any shortfall created in the level of payments a newcomer will receive under the statute is because California has been one of the most generous states in the nation.

Despite this fact, a hypothetical newcomer from a "higher AFDC benefits" state who seeks aid in California will not be penalized by the Statute. This is important because the case law in this area establishes that the triggering of strict scrutiny occurs with the existence of a "penalty," and the analysis as to whether or not a penalty exists, in turn, depends, in part, on whether or not there is some effect on the "necessities of life." (*See* Justice Marshall writing for the majority in *Memorial Hospital v. Maricopa County*, 415 U.S. 250 at 259 citing *Shapiro*. A residency requirement however does not necessarily constitute a penalty. In his dissent in *Memorial Hospital, supra*, Justice Rehnquist discussed the issue. He wrote:

> Since the Court concedes that 'some waiting period[s] . . . may not be penalties,' one would expect to learn from the opinion [how] to distinguish a waiting period which is a penalty from one which is not. Any expense imposed on citizens crossing state lines but not on those staying put could theoretically be deemed a penalty on travel; the toll exacted from persons crossing from Delaware to New Jersey by the Delaware Memorial Bridge is a 'penalty' on interstate travel in the most literal sense of all. But such charges, as well as other fees for use of transportation facilities such as taxes on airport users, have been upheld by this Court. It seems to me that the line to be derived from our prior cases is that some finan-

[7] Declaration of John D. Healy, Page 2.

> cial impositions on interstate travelers have such indirect or inconsequential impact on travel that they simply do not constitute the type of direct purposeful barriers struck down in *Edwards* and *Shapiro*. Where the impact is remote the State can reasonably require that the citizen bear some proportion of the state's costs in its facilities. *Memorial Hospital v. Maricopa County*, 15 U.S. 250 at 284. *Also see* Justice Harlan's dissent in *Shapiro v. Thompson*, 394 U.S. 618 at 661 (1969).

In the instant case, the State of California's residency requirement does not amount to a penalty; it does not affect a necessity of life. The Respondent's benefit level is precisely what it was prior to their move to California. In that regard a heightened level of scrutiny is not required and the state makes an ample argument that a rational basis exists pursuant to the implementation of the statute.

### C. Disparities Are Constitutional Where There Is a Plausible Reason for the Classification

While the District Court conceded that the Statute does not eliminate AFDC benefits, it wrote that the Statute:

> ". . . produces substantial disparities in benefit levels and makes no accommodation for the different costs of living that exist in different states." [8]

The District Court's decision took no notice of other factors affecting the quality of life in different states, such as employment levels. *Amicus* discusses employment in detail *supra*.

However, disparities are constitutional where a plausible reason exists. Social welfare or public assistance legislation runs afoul of the equal protection clause only if it cannot be said to relate rationally to a legitimate state objective. *Baker v. City of Concord*, 916 F.2d 744, 747, 748 (1st Cir. 1990).

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[8] Memorandum and Order of January 28, 1993, Judge Levy, Page 11.



Further, this Court has upheld the implementation of a program which imposed a "grant limit" regardless of the size of the family or the standard of need. *See Dandridge v. Williams*, 397 U.S. 471 (1970). In *Dandridge*, Justice Stewart in writing for the majority stated, "For here we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the 14th Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families . . ." *Dandridge v. Williams*, 397 U.S. at 471 at 484.

*Dandridge* thus articulates a point at issue in the current case: whether a disparity in payment must implicate a constitutional right. The District Court instead chose to focus on the alleged state interference with the freedom of interstate travel. What is at issue, however, is the state economic regulation and not any constitutional right.

The effect of the Statute is to temporarily continue AFDC benefits at the level new California residents received in their home states.[9] The result is not a hardship for these new California residents. Maintaining new California residents temporarily at their home state levels is a plausible purpose supporting the Statute's constitutionality.

The State has demonstrated a plausible purpose or "reasonable basis" in temporarily providing newcomers with benefit levels equal to those receivable in the state of prior residence. *See United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174, 179, 101 S. Ct. 453, 459, 461, 66 L.Ed.2d 368 (1980). *Also see* generally *Dandridge v. Williams, infra.*

### D. The Standard Should Be Deferential

The Supreme Court has stated that "[I]n structuring internal taxation schemes, the States have large leeway in

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[9] "Points and Authorities in Opposition to Plaintiff's Request for a Preliminary Injunction," Page 2.

making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Williams v. Vermont*, 472 U.S. 14, 22, 105 S. Ct. 2465, 2471, 86 L.Ed.2d 11 (1985), quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S. Ct. 1001, 1003, 35 L.Ed.2d 351 (1973).

Although Welfare and Institutions Code Section 11450.03 is not a tax statute, if it is struck down such action will directly implicate the state budget as discussed *supra.* Since California is already experiencing serious budget shortfalls, and is required by the California Constitution to balance its budget,[10] *Amicus* submits that while the Statute is not strictly a tax measure, it is nevertheless so necessarily intertwined with state revenue policy as to raise it to the level of broad deference articulated in *Williams* and *Lehnhausen, infra.*

### E. Conclusion

At issue in the present case is a state economic regulation which focuses on a social issue, not a fundamental right to interstate travel and migration such as the lower Court addressed.

As such, a heightened level of scrutiny is not required and therefore the State of California needs to show only a reasonable basis behind the regulation. Given California's economic problems; its legitimate interest in balancing its budget as required by the state Constitution; the fact that no penalty is imposed and no necessity of life is directly affected; the *Amicus Curiae* respectfully submit that the decision of the District Court and Court of Appeals were in error, and that the Supreme Court should grant Petitioner's Writ of Certiorari to give full consideration to the important implications to state welfare reform and constitution rights presented in this case.

[10] California Constitution Article IV, § 12(a).



## II. THE STATE HAS DEMONSTRATED A COMPELLING INTEREST IN THE STATUTE

Even if the Court determines that fundamental rights are involved in this case, *amicus* submits that alternately the state has presented evidence that meets its burden, and demonstrates that the Statute is necessary to achieve an overriding purpose to control government spending during an era of severe economic depression.

### A. The State's Interest

Under the strict scrutiny standard, a law will be upheld only if it is necessary to achieve a compelling or overriding government purpose. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322 (1969). The burden of proof is on the Government. *(Id.)*. The State's papers and the evidence submitted in the Declarations of Dennis Hordyk, Assistant Director of the California Department of Finance, John D. Healy, Chief Deputy Director of the California Department of Social Services, and Michael C. Genest, Deputy Director of the Welfare Programs Division of the California Department of Social Services, support a conclusion that the State of California is experiencing such extraordinary financial problems that the Statute should be upheld as a necessary and prudent measure, among others needed, to address the problem of huge spending obligations and reduced tax revenue.

The Hordyk Declaration offers that the State is facing a significant financial shortfall:

> "the Department of Finance is projecting a $2.1 billion *deficit* in the state's general fund. The budget deficit is so severe that the *state will have no reserve* available to cover the costs of unforeseen events." (Hordyk Declaration at page 1.)

This shortfall comes during a time of declining state revenues, and projected further declines in revenues:

> "The Department of Finance is projecting that revenues will actually decline by over $1 billion from 1992-93. This will be the second year of revenue declines as revenues declined from 1991-92 to 1992-93 by approximately $1.1 billion. *This is a result of continuing poor performance in the economy.* These revenue declines will require reductions to the 1993-94 fiscal year budget plan beyond those already taken in the 1992-93 budget and the current 1993-94 budget plan." (Hordyk Declaration at page 1, emphasis added.)

The Hordyk Declaration illustrates that failure to implement the statute will result in additional, unbudgeted costs to the state, for which there are no funds appropriated (Hordyk Declaration at page 2).

The Healy Declaration establishes that in the current fiscal year, the state general fund will be charged $2.8 billion to support AFDC grants. The Declaration then speaks to the necessity of the statute:

> "The immense gap between statewide revenues and expenditures has forced the state and the Department to identify areas where expenditures can be reduced and to make reductions in program allocations. Though Welfare and Institutions Code Section 1450.03 by itself will not solve the State's fiscal problem, *it is a necessary and prudent fiscal measure to achieve a balanced budget.*"

The true picture painted by the combined evidence of the Hordyk and Healy declarations, is the following: 1) there is currently an "immense gap" in California between state spending and tax revenues necessary to pay for that spending; 2) the outlook regarding additional tax revenues in future years is even dimmer because of poor economic conditions; 3) this situation has forced the state to make hard decisions about spending reduction; and 4) Welfare and Institutions Code Section 11450.03 is a *necessary* element of a broader package of measures



needed to deal with the looming financial insolvency of California.

In addtiion, the State of California has a legitimate interest in attempting to prevent welfare fraud. Given the state's financial picture it also has a legitimate interest in developing a plan which will allow the Government to make an assessment of future budget needs relative to public assistance.[11]

### B. The Statute Is Necessary

The evidence acquires a heightened value when analyzed in the context of the legal requirement in the California Constitution that the state budget must be balanced annually.

Despite the standard of review urged by the State, a clear inference to be drawn from the papers submitted by the State and the Declarations of the officials previously cited is that California is on the brink of financial ruin and that enactment of the Statute is just one of many reforms in the welfare system whose multiplicity of purposes include compliance with the Constitutional requirement of a balanced budget.

The District Court cites *Shapiro, infra,* to support a conclusion that "the conservation of the taxpayers purse" is not sufficient to support a durational residency requirement which implicates the right to migrate between states.[12] However, the present case can be distinguished from *Shapiro* in two significant ways: 1) *Shapiro* involved a durational requirement that carried a penalty in that it denied all benefits, while in the present case there is no penalty because benefits at previous state levels

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[11] See *Shapiro v. Thompson*, 394 U.S. 618 at 618. See also Justice Harland's dissent, at page 672 in which he discusses a number of legitimate government interests.

[12] Memorandum and Order of January 28, 1993, Judge Levy, Page 8.

are provided; and 2) a compelling need for the restrictions in *Shapiro* could not be identified.

If a compelling state interest can ever be found by the Court, it will be under circumstances so critical that they constitute an emergency. Such is the case with Welfare and Institution Code § 11450.03 (a). As stated *infra*, the Statute is a part of broader legislation intended to provide welfare reforms. But the District Court failed to consider the *emergency nature* of the legislation.[13] The District Court erred by not giving this evidence and other evidence supplied by the State appropriate weight in establishing a compelling state interest in support of the Statute.

The State has made the case that an emergency situation exists, and has shown a compelling interest by any characterization of the need to uphold the one year durational residency requirement to receive higher benefits. However, the District Court also had available to it common knowledge of the dire economic conditions confronting California, which further supports a finding that the State has a compelling interest and need for this limited measure as one element of an overall effort to control welfare spending.

The State's primary interest at issue is its very financial survival. Extraordinary measures, carefully tailored to minimize their effect on equal protection, are justified to alleviate the pressures on the state budget.

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[13] Sec. 154, Ch. 722, Stats. 1992 provides "This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are in order to apply the provisions of this act to the entire 1992-93 fiscal year and so facilitate the orderly administration of the system for providing human services to the people of the state. It is necessary that this act take effect immediately."



The State has many other interests in protecting its solvency, which are compelling. Naturally, a bankrupt state can neither afford to pay its' welfare recipients let alone its' state employees. Again, it is a matter of common knowledge that the State of California was forced to issue $475 million in I.O.U.s to state employees and others to cover its' bills as a result of these huge deficits (*Wall Street Journal,* June 24, 1992, p. A2).

The Bank of America, Wells Fargo Bank, and Union Bank refused to honor these state currency warrants (*The New York Times,* August 6, 1992, p. A7). The state has a compelling interest in maintaining basic public services, and continuation of these services require that the state pay its' employees. This interest is clearly implicated by spending programs that are grossly out-of-sinc with revenues.

Similarly, the state has a compelling interest during a time of economic instability to contribute to employment in the state to the fullest extent, to ensure economic well-being and a tax base. One effect of the Statute, as offered in the Genest Declaration, will be to promote employment among new California residents (Genest Declaration, p. 2).

In the *Dandridge* case, *infra*, Justice Stewart's majority opinion found a "reasonable basis" for the state's regulation in encouraging employment. The opinion stated: "It is true that in some AFDC families whose determined standard of need is below the regulatory maximum [the] employment incentive is absent. But the equal protection clause does not require that a State choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge v. Williams,* 397 U.S. 471 at 487 citing *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61 (1911).

The Declarations of the Respondents in the District Court make some general references to their interest in finding work in California. However, the employment statistics from the U.S. Department of Labor paint a

much bleaker picture on their job prospects in California than exist in their "home" states, where, according to their evidence, the cost of living is much less. The following table is a comparison of applicable unemployment statistics for 1992 between California and the three states of Respondents prior residence: [14]

| State | # Unemployed | Unemployment Rate |
|---|---|---|
| California | 1,382,450 | 9.1% |
| Colorado | 102,907 | 5.8% |
| Louisiana | 149,661 | 7.7% |
| Oklahoma | 91,423 | 6% |

While California has one of the highest levels of AFDC payments in comparison to other states, it also has among the highest levels of unemployment. The District Court considered largely anecdotal evidence regarding a higher "cost of living" in California in relation to other states to support the need for higher welfare payments to cover what the Respondents alleged were, "the necessities of life." But one necessity of life, namely—a job—and the high level of unemployment in the state, are missing from the District Court's analysis.

Respondents argue that "California and Louisiana are not remotely interchangeable states" when it comes to levels of welfare benefits. The fact is, however, that they do not have to be interchangeable. Respondent Green chose to move to California. The State, in turn, has not denied benefits. The State has afforded Respondent Green the same level of benefits which previously covered any necessities. Further, the State will pay an elevated level of benefits after twelve months. The State will do this, even though facts exist which indicate that Respond-

[14] U.S. Department of Labor, Seasonally Adjusted Local Area Unemployment Statistics, 1992.



ent Green, for example, has a better chance of locating a job in Louisiana than in California.

*Amicus* submits that a limited measure which has the affect of discouraging some migration is made compelling not only because of severe budget shortfalls, but also because of the eroding job base in this state. This eroding job base is an outgrowth of the dire economic problems California is experiencing. The state has an interest in deterring further unemployment and higher costs to the welfare system during a time of severe budgetary shortfalls and poor economic conditions. The failure of the lower Courts to recognize these mitigating points is a reason why the Supreme Court should grant Petitioner's Writ of Certiorari.

### C. The Statute Is Carefully Limited in Scope

The Statute does not deny newcomers public assistance. As discussed earlier, unlike the durational residency requirement in *Shapiro*, infra, benefits are in fact provided, and at the same level available in the state of previous residence. Significantly, newcomers are not penalized who migrate to California, and the level of change in benefits is determined by factors outside of and beyond the control of the Legislature.

Support for the notion that the Statute is limited in scope can be found in the evidence offered at trial by Petitioners. Only 6.6 percent of the existing AFDC caseload in California resided in another state within one year of application for AFDC benefits.[15] Of this group, many will not be impacted with the severity Respondents allege because of the variances of state welfare payments. If the law is upheld, the caseload level may be reduced as potential newcomers seek better opportunities in other states. Clearly, the brunt of California's needed welfare reforms will not be carried on the backs of those new-

[15] Declaration of John D. Healy, Page 2.

comers who apply for benefits under the Statute.[16] Much more will have to be done to reduce the budget deficit.

The Statute encourages work, reduces costs, and provides needed welfare assistance. It is a carefully calculated, and necessary step in the right direction, and an important part of a much bigger picture of welfare reform in California.

Respondents minimize the benefit of the cost savings on implementation of the statute and belittle the interest of the State in setting firm economic priorities. They would have the Court believe that all the State needs to do is come up with a few more million dollars for these AFDC applicants. If this Court refuses to grant Petitioner's Writ, Government, its employees and its dependents will suffer as the fiscal crisis over funding of the welafre system and operation of state government continues. The Court will have became, in the words of Justice Harlan, a "super legislature," and the Court will have taken away from the People their right to hold elected officials accountable for the state's welfare system.

The interest involved in this case does not amount to a fundamental right which would require a heightened level of scrutiny. This case concerns an economic regulation and the State of California has shown a reasonable basis for its enactment. However, even if the Court could conclude that the interest of the Respondents is fundamental, the State has shown that its interest should be considered compelling in light of the dire economic circumstances and the Constitutional obligation of the State to balance its budget.

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[16] *Id.* Savings on implementing the Statute are estimated to be $8.4 million in 1992-93 out of a total program of $2.8 billion in spending.



## CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's Writ of Certiorari.

Respectfully submitted,

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